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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ERIK CHRISTIAN ANDERSEN,

Defendant and Appellant.

G0056663

(Super. Ct. No. 17ZF0002)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County,
Glenn R. Salter, Judge. Affirmed. Request for judicial notice. Granted.

Aaron J. Schechter, under appointment by the Court of Appeal, for
Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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A jury convicted Erik Christian Andersen of assault and various other offenses, and the trial court sentenced him to four years in state prison. The California Department of Corrections and Rehabilitation (CDCR) subsequently advised the court of an apparent error in Andersen's sentence, and the court resentenced him accordingly.

Andersen appealed the resentencing order. His appointed counsel filed a brief under the procedures outlined in *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) and *Anders v. California* (1967) 386 U.S. 738. Andersen did not file a supplemental brief. Our independent review of the record discloses no arguable issues. Accordingly, we affirm the order.

I.

FACTS

This is our second opinion in this case. In our first opinion, we affirmed the judgment, finding no error in the trial court's denial of Andersen's request for a self-defense instruction.¹ Our prior opinion includes a complete statement of the facts. We will not repeat them in full here, as the sole issue in the present appeal relates to sentencing.

The jury found Andersen guilty of carrying a dirk or dagger (count 2), attempted arson (count 3), simple assault (count 4), and making criminal threats (count 5). The jury also found true a deadly weapon enhancement on count 5 for using a weapon while making such threats.

The trial court sentenced Andersen to a total of four years in state prison, consisting of the upper term of three years on count 3 (the base term) and one year for the enhancement. Running concurrent to the three-year term were two years in state prison

¹ We grant Andersen's request for judicial notice, which includes the clerk's transcripts, reporter's transcripts, briefs and opinion in *People v. Andersen* (Oct. 19, 2018, G055689) [nonpub. opn.].

on count 2, two years in state prison on count 5, and six months in county jail on count 4. The court awarded Andersen 348 days of credits.

The CDCR subsequently advised the trial court of an apparent error in Andersen's sentence. In its letter to the court, the CDCR noted the sentencing enhancement was tied to count 5, but count 5's term was concurrent to count 3 (the base term). Citing *People v. Mustafaa* (1994) 22 Cal.App.4th 1305 (*Mustafaa*)², the CDCR asked the court to clarify its abstract of judgment and minute order.

The trial court resentenced Andersen because of the apparent error, ordering that the base term, which was previously count 3, would now be count 5. It also increased the sentence on count 5 from two years to three years (matching the original sentence for the previous base term, count 3). Thus, the total sentence remained four years in state prison, consisting of three years on count 5 and one year for the deadly weapon enhancement, with concurrent terms of two years on count 2, two years on count 3, and six months on count 4. Andersen's presentence credits remained the same.

At the resentencing hearing, Andersen's counsel objected to the trial court's decision to make count 5 the base term, noting the court had previously imposed a mid-term sentence on that count and the court was now imposing an upper term. The court responded it already had imposed the upper term on count 3, and the prosecution added that changing the base term did not result in a change of the exposure or the release date. Andersen did not object on any other grounds.

Andersen timely appealed. Andersen's appointed counsel filed a brief raising no issue, but asked this court to independently review the record on appeal. We

² *Mustafaa* held a trial court may not impose a concurrent term for a felony conviction and a consecutive term for the attendant enhancement because the enhancement is dependent upon and necessarily attached to the underlying felony. (*Mustafaa*, *supra*, 22 Cal.App.4th at p. 1311.)

gave Andersen 30 days to file a supplemental brief, but he did not do so. He has not requested to have appellate counsel relieved.

II.

DISCUSSION

Following *Wende* guidelines, we have reviewed counsel's brief and the appellate record. To assist the court in its review, counsel identified several issues for our consideration: whether the trial court erred in deciding Andersen's original sentence was unauthorized; whether the court erred in correcting the unauthorized sentence by changing the base term from count 3 to count 5; whether the court erred in resentencing Andersen to the upper term on count 5 without a proper finding in aggravation; and whether the court violated Andersen's constitutional rights by resentencing him to an increased term on count 5. We have examined the record, including the matters identified by counsel, and have found no arguable issue. Consequently, we affirm. (*Wende, supra*, 25 Cal.3d at p. 443.)

III.

DISPOSITION

The order is affirmed.

ARONSON, ACTING P. J.

WE CONCUR:

IKOLA, J.

GOETHALS, J.